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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Case No:

FERNANDO GASTELUM,

Plaintiff,

vs.

ASHFORD PHOENIX AIRPORT LP,

Defendant.

**VERIFIED COMPLAINT**

- 1. Americans with Disabilities Act**
- 2. Negligence**

**JURY TRIAL REQUESTED**

**INTRODUCTION**

1. Plaintiff brings this action pursuant to the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and Department of Justice Standards for Accessible Design (“ADA”).
2. Plaintiff’s left leg is amputated below the knee. Plaintiff moves with the aid of a wheelchair or a prosthetic leg. Plaintiff suffers from a disability as this term is defined in 42 U.S.C. 12102 and 28 CFR §36.105 (c)(1)(i) which includes, *inter alia*, “walking, standing, sitting, reaching, lifting [and] bending” and other activities. A partial missing limb “substantially limit[s] musculoskeletal function” as a matter of law. 28 CFR § 36.105 (d)(2)(iii)(D).



- 1 3. Plaintiff is constantly and relentlessly segregated and discriminated against,  
2 excluded, denied equal services, or otherwise treated differently than other  
3 individuals because of his disability, and has been denied the opportunity to  
4 participate in or benefit from services, facilities and opportunities available  
5 people without disabilities.  
6
- 7 4. Plaintiff incorporates herein Congressional Findings and Purpose set forth in 42  
8 U.S.C. §12-101 and 28 CFR §36.101.  
9
- 10 5. Plaintiff is being subjected to discrimination on the basis of disability in  
11 violation of Subchapter III of the Americans with Disabilities Act or has  
12 reasonable ground to believe that that he is about to be subjected to  
13 discrimination in violation of 42 U.S.C. §12183.  
14
- 15 6. Plaintiff alleges that he has actual notice that Defendant has failed to comply  
16 with Subchapter III of the ADA, 28 CFR 36 and the 2010 Standards of  
17 Accessibility Design (“2010 Standards”) as more fully alleged below.  
18
- 19 7. Plaintiff alleges that he has no obligation to engage in futile gestures as  
20 referenced in 42 U.S.C. §12188(A)(1) and 28 C.F.R. Subpart E  
21
- 22 8. Defendant has discriminated against Plaintiff by the following actions and  
23 failures to act –  
24
  - 25 a. Failing to make reasonable modifications in policies, practices, or  
26 procedures which are necessary to afford Plaintiff and others similarly  
27  
28



1 situated accessibility to Defendant's place of public accommodation, thus  
2 violating 42 U.S.C. §12182(b)(2)(A)(ii) and 28 C.F.R. §36.302(a); and

3 b. Failing to take such steps as may be necessary to ensure that no individual  
4 with a disability is excluded, denied services, segregated or otherwise treated  
5 differently than other individuals because of the absence of auxiliary aids  
6 and services, thus violating 42 U.S.C. §12182(b)(2)(A)(iii); and  
7

8 c. Failing to remove architectural barriers where such removal is readily  
9 achievable, thus violating 42 U.S.C. §12182(b)(2)(A)(iii), 28 CFR 36 and  
10 the 2010 Standards..  
11

## 12 **PARTIES**

13  
14 9. Plaintiff is a disabled person and a committed individual to advance the time  
15 when places of public accommodations will be compliant with the ADA.  
16 Plaintiff resides in Casa Grande, Arizona.  
17

18 10. Plaintiff's disability includes the amputation of the left leg below the knee.  
19 Plaintiff moves with the use of a wheelchair, walker and/or a prostethis.  
20

21 11. Defendant, ASHFORD PHOENIX AIRPORT LP, D/B/A Residence Inn  
22 Phoenix Airport owns and/or operates hotel at 801 N. 44th Street, Phoenix, AZ  
23 85008, which is a public accommodation pursuant to 42 U.S.C. § 12181(7)(A)  
24 which offers public lodging services *See* 28 CFR §36.104 and a listing of public  
25 accommodations in 42 U.S.C. §12181(7).  
26

## 27 **JURISDICTION**



1 12.District Court has jurisdiction over this case or controversy by virtue of 28  
2 U.S.C. §§ 28-1331 and 42 U.S.C. § 12188 and 28 U.S.C. § 1367.

3 13.Plaintiff brings this action as a private attorney general who has been personally  
4 subjected to discrimination on the basis of his disability, *see* 42 U.S.C.12188  
5 and 28 CFR §36.501.  
6

7 14.Venue is proper pursuant to 28 U.S.C. § 1391.  
8

9 **STANDING TO SUE JURISDICTION**

10 15. Plaintiff reviewed 3<sup>rd</sup> party and 1<sup>st</sup> party lodging websites to book an  
11 ambulatory and wheelchair accessible room. Plaintiff was denied equal  
12 opportunity to use and enjoyment of a critical public accommodation through  
13 Defendant's acts of discrimination and segregation alleged below.  
14

15 16.Plaintiff intends to book a room at the Defendant's hotel once Defendant has  
16 removed all accessibility barriers, including the ones not specifically referenced  
17 herein, and has fully complied with the ADA.  
18

19 17. Because of Defendant's denial of Plaintiff's use and enjoyment of a critical  
20 public accommodation through Defendant's acts of discrimination and  
21 segregation, he is deterred from visiting that accommodation by accessibility  
22 barriers and other violations of the ADA.  
23

24 18.Defendant has denied Plaintiff -  
25

26 a. The opportunity to participate in or benefit from the goods, services,  
27 facilities, privileges, advantages, or accommodations at its hotel.  
28



b. The right to be included in the population at large who benefits from Defendant's hotel without being segregated because his disability.

19. Plaintiff intends to book a room at Defendant's hotel in the future but he will likely suffer repeated injury unless and until the barriers of accessibility and ambulatory and wheelchair accessibility barriers have been removed.

### **CONTINUING JURISDICTION**

20. ADA violations which form the subject matter of this Verified Complaint change frequently due to regular maintenance, remodels, repairs, and normal wear and tear.

21. Defendant's ADA Violations are of the type that can reasonably be expected to start up again, allowing Defendant to be free to return to the old ways' after the threat of a lawsuit had passed.

22. If one or more ADA violation are cured, Plaintiff alleges that they were cured and timed to anticipate the current lawsuit, and not as a good faith effort to comply with the ADA.

23. To remedy the violations of 28 CFR 36.302(e), Defendant would be required not only to modify all 1<sup>st</sup> and 3<sup>rd</sup> party lodging websites, but would be required to do so truthfully and accurately.

### **COUNT ONE**

Violation of Plaintiff's Civil Rights under the ADA



1 24.Plaintiff realleges all allegations heretofore set forth.

2 25.By virtue of his disability, Plaintiff requires an ADA compliant lodging facility  
3 particularly applicable to his mobility, both ambulatory and wheelchair assisted.  
4

5 26.On or about January 22, 2018 Plaintiff intended to visit Phoenix and spend the  
6 night there. He visited a 3<sup>rd</sup> party website [www.expedia.com](http://www.expedia.com) to book a room.

7 27.3<sup>rd</sup> party website disclosed general availability and description of Defendant's  
8 hotel.  
9

10 28.3<sup>rd</sup> party website failed to identify and describe mobility related accessibility  
11 features and guest rooms offered through its reservations service in enough  
12 detail to reasonably permit Plaintiff to assess independently whether  
13 Defendant's hotel meets his accessibility needs.  
14

15 29.3<sup>rd</sup> party websites states , "Accessibility  
16

17 If you have requests for specific accessibility needs, please note them at check-out  
18 when you book your room.

- 19 • Accessible bathroom
- 20 • Roll-in shower
- 21 • In-room accessibility"

22 30.3<sup>rd</sup> party website failed to disclose the following accessibility features in  
23 enough detail to reasonably permit Plaintiff to assess independently whether  
24 Defendant's hotel and guest rooms meets his accessibility needs:

- 25 a. Whether accessible routes comply with § 206 of the 2010 Standards; and
- 26 b. Whether operable parts on accessible elements, accessible routes and
- 27 accessible rooms comply with §§205 and 803 of the 2010 Standards; and
- 28



- c. Whether any accessible means of egress comply with §207 of the 2010 Standards.
- d. Whether parking spaces comply with §§208 and 502 of the 2010 Standards; and
- e. Whether passenger loading zones comply with §§209 and 503 of the 2010 Standards; and
- f. Whether any drinking fountains comply with §211 of the 2010 Standards; and
- g. Whether any kitchens, kitchenettes and sinks comply with §§212 and 804 of the 2010 Standards; and
- h. Whether toilet facilities and bathing facilities comply with §213 of the 2010 Standards; and
- i. Whether any washing machines and clothes dryers comply with §§214 and 611 of the 2010 Standards; and
- j. Whether accessible hotel rooms comply with §224 of the 2010 Standards; and
- k. Whether dining surfaces and work surfaces comply with §§226 and 902 of the 2010 Standards; and
- l. Whether sales and service elements comply with §227 of the 2010 Standards; and



- 1 m. Whether any saunas and steam rooms comply with §§241 and 612 of the
- 2 2010 Standards; and
- 3 n. Whether any swimming pools, wading pools and spas comply with
- 4 §§242 and 1009 of the 2010 Standards; and
- 5
- 6 o. Whether floor and ground surfaces comply with §302 of the 2010
- 7 Standards; and
- 8
- 9 p. Whether changes in level comply with §303 of the 2010 Standards; and
- 10 q. Whether turning spaces comply with § 304 of the 2010 Standards; and
- 11
- 12 r. Whether floor and ground spaces comply with §305 of the 2010
- 13 Standards; and
- 14
- 15 s. Whether knee and toes clearances comply with §306 of the 2010
- 16 Standards; and
- 17
- 18 t. Whether protruding objects comply with §307 of the 2010 Standards; and
- 19
- 20 u. Whether the reach ranges comply with §308 of the 2010 Standards; and
- 21
- 22 v. Whether the operating parts on accessible features comply with §309 of
- 23 the 2010 Standards; and
- 24
- 25 w. Whether accessible routes comply with §402 of the 2010 Standards; and
- 26
- 27 x. Whether walking surfaces comply with §403 of the 2010 Standards; and
- 28
- y. Whether doors, doorways and gates comply with §404 of the 2010
- Standards; and
- z. Whether ramps comply with § 405 of the 2010 Standards; and



- 1 aa. Whether curb ramps comply with §406 of the 2010 Standards; and  
2 bb. Whether any elevators comply with §407 of the 2010 Standards; and  
3 cc. Whether any platform lifts comply with §410 of the 2010 Standards; and  
4 dd. Whether any stairways comply with §504 of the 2010 Standards; and  
5 ee. Whether handrails on elements requiring handrails comply with §505 of  
6 the 2010 Standards; and  
7  
8 ff. Whether the plumbing facilities comply with Chapter 6 of the 2010  
9 Standards with respect to all the following subchapters of Chapter 6: §§  
10 602 (drinking fountains), 603 (toilets and bathing rooms), 604 (water  
11 closets and toilet compartments, 605 (urinals), 606 (lavatories and sinks),  
12 607 (bathtubs), 607 (shower compartments), 608 (grab bars), 610 (seats  
13 in bathtubs and shower compartments), and  
14  
15 gg. Whether service counters comply with 904 of the 2010 Standards.  
16

17  
18 31. Thereafter, Plaintiff consulted Defendant's 1<sup>st</sup> party website [www.marriott.com](http://www.marriott.com)  
19 to determine the information unavailable from the third-party website.  
20

21 32. 1<sup>st</sup> party websites did state-

22 ***"Accessibility"***  
23

24 **For more information call the general manager of the hotel.**

- 25
  - Accessible guest rooms have a 32 inch wide opening
  - Business center entrance
  - Fitness center entrance
  - Hotel has on site accessible self-parking
  - Main entrance
  - Meeting spaces
  - Pathway to registration desk  
28



- Pool entrances
- Registration desk
- Route to accessible guest rooms is accessible
- Service animals allowed for persons with disabilities”

33.1<sup>st</sup> party website failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant’s hotel meets his accessibility needs.

34. In particular, 1<sup>st</sup> party website failed to disclose the following accessibility features in enough detail to reasonably permit Plaintiff to assess independently whether Defendant’s hotel and guest rooms meets his accessibility needs:

- a. Whether accessible routes comply with § 206 of the 2010 Standards; and
- b. Whether operable parts on accessible elements, accessible routes and accessible rooms comply with §§205 and 803 of the 2010 Standards; and
- c. Whether any accessible means of egress comply with §207 of the 2010 Standards.
- d. Whether parking spaces comply with §§208 and 502 of the 2010 Standards; and
- e. Whether passenger loading zones comply with §§209 and 503 of the 2010 Standards; and
- f. Whether any drinking fountains comply with §211 of the 2010 Standards; and
- g. Whether any kitchens, kitchenettes and sinks comply with §§212 and 804 of the 2010 Standards; and



- h. Whether toilet facilities and bathing facilities comply with §213 of the 2010 Standards; and
- i. Whether any washing machines and clothes dryers comply with §§214 and 611 of the 2010 Standards; and
- j. Whether accessible hotel rooms comply with §224 of the 2010 Standards; and
- k. Whether dining surfaces and work surfaces comply with §§226 and 902 of the 2010 Standards; and
- l. Whether sales and service elements comply with §227 of the 2010 Standards; and
- m. Whether any saunas and steam rooms comply with §§241 and 612 of the 2010 Standards; and
- n. Whether any swimming pools, wading pools and spas comply with §§242 and 1009 of the 2010 Standards; and
- o. Whether floor and ground surfaces comply with §302 of the 2010 Standards; and
- p. Whether changes in level comply with §303 of the 2010 Standards; and
- q. Whether turning spaces comply with § 304 of the 2010 Standards; and
- r. Whether floor and ground spaces comply with §305 of the 2010 Standards; and



- s. Whether knee and toes clearances comply with §306 of the 2010 Standards; and
- t. Whether protruding objects comply with §307 of the 2010 Standards; and
- u. Whether the reach ranges comply with §308 of the 2010 Standards; and
- v. Whether the operating parts on accessible features comply with §309 of the 2010 Standards; and
- w. Whether accessible routes comply with §402 of the 2010 Standards; and
- x. Whether walking surfaces comply with §403 of the 2010 Standards; and
- y. Whether doors, doorways and gates comply with §404 of the 2010 Standards; and
- z. Whether ramps comply with § 405 of the 2010 Standards; and
- aa. Whether curb ramps comply with §406 of the 2010 Standards; and
- bb. Whether any elevators comply with §407 of the 2010 Standards; and
- cc. Whether any platform lifts comply with §410 of the 2010 Standards; and
- dd. Whether any stairways comply with §504 of the 2010 Standards; and
- ee. Whether handrails on elements requiring handrails comply with §505 of the 2010 Standards; and
- ff. Whether the plumbing facilities comply with Chapter 6 of the 2010 Standards with respect to all the following subchapters of Chapter 6: §§ 602 (drinking fountains), 603 (toilets and bathing rooms), 604 (water closets and toilet compartments, 605 (urinals), 606 (lavatories and sinks),



607 (bathtubs), 607 (shower compartments), 608 (grab bars), 610 (seats  
in bathtubs and shower compartments), and

gg. Whether service counters comply with 904 of the 2010 Standards.

35. Thereafter Plaintiff called Defendant's hotel to inquire whether it was  
compliant with the ADA and suitable for Plaintiff's accessibility needs.

36. Plaintiff spoke with hotel reservations clerk, Jocelyn. Plaintiff specifically  
inquired whether Defendant's hotel was compliant with the Americans with  
Disabilities Act and compliant with the specific requirements of accessibility.

37. Reservations clerk responded that she was not too sure and would believe that  
they would be but didn't want to misinform Plaintiff about whether or not the  
hotel was compliant with the Americans with Disabilities Act.

38. Plaintiff subsequently visited the hotel to independently verify that it was, at  
least on the outside, suitable to accommodate his disability.

39. Plaintiff noted that the hotel was not compliant with the ADA and was replete  
with accessibility barriers in the details which include, without limitation, the  
following areas of non-compliance:

- a. **208.3.1.** The accessible parking is not the closest parking to the main  
entrance.
- b. **208.3.1.** The accessible parking is not dispersed to all entrances.
- c. **502.4.** Multiple accessible parking spaces have a cross slope steeper than  
1:48 inches.



- d. **502.4.** At least 1 accessible parking space has a running slope steeper than 1:20 inches.
- e. **502.6.** Multiple accessible parking signs are below the required minimum of 60 inches from the ground to the bottom of the sign.
- f. **403.3.** Numerous accessible routes have a walking surface with a cross slope steeper than 1:48 inches. **403.3.** Multiple accessible routes have a walking surface with a running slope steeper than 1:20 inches.
- g. **403.5.1.** The accessible route to the lounge seating by the pool has a clear width less than the required minimum of 36 inches.
- h. **403.5.3.** The accessible route extending from the entrance near the pet area is less than 60 inches wide without a passing space every 200 feet.
- i. **405.2.** The curb ramp leading from the street to the hotel has running slope steeper than 1:12 inches. **406.4.** The landings at the top of multiple curb ramps have a clear length less than the required minimum of 36 inches.
- j. **308.2.1.** Both pool entrances have a handle that is located at an improper reach range over 48 inches. ***Operable Parts: 309***
- k. **309.4.** The pool gate handles require a twisting of the wrist motion to open.
- l. **The basketball court has no accessible entrance.**
- m. **The pet area has no accessible entrance.**
- n. **The pet waste receptacle is inaccessible;** and
- o. Other ADA violations to be discovered through a discovery process.



1 40. As a result of the deficiencies described above, Plaintiff declined to book a room  
2 at the hotel.

3 41. The removal of accessibility barriers listed above is readily achievable.

4  
5 42. As a direct and proximate result of ADA Violations, Defendant's failure to  
6 remove accessibility barriers prevented Plaintiff from equal access to the  
7 Defendant's public accommodation.  
8

9 **WHEREFORE**, Plaintiff prays for all relief as follows:

10 A. Relief described in 42 U.S.C. §2000a – 3; and

11 B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -

12 C. Injunctive relief order to alter Defendant's place of public  
13 accommodation to make it readily accessible to and usable by ALL  
14 individuals with disabilities; and  
15

16 D. Requiring the provision of an auxiliary aid or service, modification of a  
17 policy, or provision of alternative methods, to the extent required by  
18 Subchapter III of the ADA; and  
19

20 E. Equitable nominal damages in the amount of \$1.00; and

21 F. For costs, expenses and attorney's fees; and

22 G. All remedies provided for in 28 C.F.R. 36.501(a) and (b).  
23  
24

25  
26 **COUNT TWO**  
27 Negligence

28 43. Plaintiff realleges all allegations heretofore set forth.



1 44. Defendant had a duty to Plaintiff to remove ADA accessibility barriers so that  
2 Plaintiff as a disabled individual would have full and equal access to the public  
3 accommodation.

4  
5 45. Defendant breached this duty.

6 46. Defendant is or should be aware that, historically, society has tended to isolate  
7 and segregate individuals with disabilities, and, despite some improvements,  
8 such forms of discrimination against individuals with disabilities continue to be  
9 a serious and pervasive social problem<sup>1</sup>.

10  
11 47. Defendant knowingly and intentionally participated in this historical  
12 discrimination against Plaintiff, causing Plaintiff damage.

13  
14 48. Discrimination against individuals with disabilities persists in the use and  
15 enjoyment of critical public accommodations<sup>2</sup>.

16  
17 49. Defendant's knowing and intentional persistence in discrimination against  
18 Plaintiff is alleged, causing Plaintiff damage.

19  
20 50. Individuals with disabilities, including Plaintiff, continually encounter various  
21 forms of discrimination, including outright intentional exclusion, the  
22 discriminatory effects of architectural, overprotective rules and policies, failure  
23 to make modifications to existing facilities and practices, exclusionary  
24

25  
26  
27 <sup>1</sup> 42 U.S.C. § 12101(a)(2)

28 <sup>2</sup> 42 U.S.C. § 12101(a)(3)



1 qualification standards and criteria, segregation, and relegation to lesser  
2 services, programs, activities, benefits, jobs, or other opportunities<sup>3</sup>.

3 51. Defendant's knowing and intentional discrimination against Plaintiff reinforces  
4 above forms of discrimination, causing Plaintiff damage.  
5

6 52. Census data, national polls, and other studies have documented that people  
7 with disabilities, as a group, occupy an inferior status in our society, and are  
8 severely disadvantaged socially, vocationally, economically, and  
9 educationally<sup>4</sup>.  
10

11 53. Defendant's knowing and intentional discrimination has relegated Plaintiff to  
12 an inferior status in society, causing Plaintiff damage.  
13

14 54. The Nation's proper goals regarding individuals with disabilities are to assure  
15 equality of opportunity, full participation, independent living, and economic  
16 self-sufficiency for such individuals<sup>5</sup>.  
17

18 55. Defendant's knowing and intentional discrimination has worked counter to our  
19 Nation's goals of equality, causing Plaintiff damage.  
20

21 56. Continued existence of unfair and unnecessary discrimination and prejudice  
22 denies people with disabilities the opportunity to compete on an equal basis and  
23 to pursue those opportunities for which our free society is justifiably famous,  
24

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25  
26 <sup>3</sup> 42 U.S.C. §12101(a)(5)

27 <sup>4</sup> 42 U.S.C. §12101(a)(6)

28 <sup>5</sup> 42 U.S.C. §12101(a)(7)



1 and costs the United States billions of dollars in unnecessary expenses resulting  
2 from dependency and nonproductivity<sup>6</sup>.

3 57. Defendant's knowing and intentional unfair and unnecessary discrimination  
4 against Plaintiff demonstrates Defendant's knowing and intentional damage to  
5 Plaintiff.  
6

7 58. Defendant's breach of duty caused Plaintiff damages including, without  
8 limitation, the feeling of segregation, discrimination, relegation to second class  
9 citizen status the pain, suffering and emotional damages inherent to  
10 discrimination and segregation and other damages to be proven at trial.  
11

12 59. By violating Plaintiff's civil rights, Defendant engaged in intentional,  
13 aggravated and outrageous conduct.  
14

15 60. The ADA has been the law of the land since 1991, but Defendant engaged in a  
16 conscious action of a reprehensible character, that is, Defendant denied Plaintiff  
17 his civil rights, and cause him damage by virtue of segregation, discrimination,  
18 relegation to second class citizen status the pain, suffering and emotional  
19 damages inherent to discrimination and segregation and other damages to be  
20 proven at trial  
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28 <sup>6</sup> 42 U.S.C. §12101(a)(8)



1 61. Defendant either intended to cause injury to Plaintiff or defendant consciously  
2 pursued a course of conduct knowing that it created a substantial risk of  
3 significant harm to Plaintiff.  
4

5 62. Defendant is liable to Plaintiff for punitive damages in an amount to be proven  
6 at trial sufficient, however, to deter this Defendant and others similarly situated  
7 from pursuing similar acts.  
8

9 **WHEREFORE**, Plaintiff prays for relief as follows:

10 A. For finding of negligence; and

11 B. For damages in an amount to be proven at trial; and

12 C. For punitive damages to be proven at trial; and

13 D. For such other and further relief as the Court may deem just and proper.  
14  
15  
16

17 **REQUEST FOR TRIAL BY JURY**

18 Plaintiff respectfully requests a trial by jury in issues triable by a jury.

19 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of January 2018.  
20

21 **STROJNIK, P.C.**

22 

23 \_\_\_\_\_  
24 Peter Strojnik, 6464  
Attorneys for Plaintiff

25 **VERIFICATION**

26 Plaintiff verifies that he has read the forgoing and that the factual allegations stated above  
27 are true and correct to the best of his knowledge, information and belief. Plaintiff makes  
28 this verification under the penalty of perjury.



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/s/ Fernando Gastelum  
Authorized Electronically